THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 5839 of 2005

16-09-2005

Between:

Sree Ram Builders, Ramanthapur, R.R.District, rep. by

Its Managing Partner.

.....PETITIONER

AND

A.P.State Consumer Disputes Redressal Commission, Hyderabad,

rep. by its Registrar & Another.

.....RESPONDENTS

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 5839 of 2005

ORDER : (Per Hon'ble Sri Bilal Nazki, ACJ)

This writ petition is filed against an order of the A.P. State Consumer Disputes Redressal Commission (hereinafter referred to as 'the Commission'). The Commission passed an order in *ex parte* against the writ petitioners. After they were served with the Award, they moved an application for setting aside of the order passed in *ex parte*. The Commission dismissed the application on the ground that it had no power of review. It relied on a judgment of Supreme Court reported in *Jyotsana Arvindkumar Shah & Others v. Bombay Hospital Trust*, in which it was held, *"It is well settled that power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication."* Therefore, it dismissed the application. In this writ petition, it is stated that setting aside of an *ex parte* decree would not amount to review of the order of the Commission and the Commission was bound to decide the application on merits. Eventually, directions have been sought that the Commission may decide the matter on merits.

On the other hand, the respondents submitted that the orders passed in *ex parte* and also in the application, are appellable under the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act') therefore, the petitioners, if aggrieved, should have approached the National Commission for redressal of their grievances.

Counsel for petitioners submitted that this question was decided by a Division Bench of this Court in a judgment reported in *Meesa Varalakshmi v. A.P. State Consumer Disputes Redressal Commission, Hyderabad & Another*. But the learned Counsel submitted that this judgment did not lay down any law that the Commission has a power to set aside the *ex parte* decrees. It also did not lay down any law that where an appeal is provided, the High Court should entertain writ petitions under Article 226 of the Constitution. We have gone through the judgment. It was conceded that the Act does not confer any power on the Commission to set aside the *ex parte* orders. But in the case before the Court, it was found that there was no notice to the other side, therefore, High Court concluded that the order of the Commission in *ex parte*, was a nullity.

It stated,

> *"It is true that the Consumer Protection Act or the Rules do not specifically provide for power in the Forums to set aside ex parte orders. But, where an order has been passed without notice to the parties, it is nothing but a nullity in law and an action taken without jurisdiction. The Tribunal would have the implied and ancillary power to set its own record straight by purging itself of orders passed by it which is non est in law. To that extent its power to set aside an ex parte order has to be assumed."*

In the present case, the Commission has found that it was not a case of non-service of notice on the writ petitioners, therefore, in our view, this judgment would not apply to this case.

Counsel for petitioners has also referred to a judgment reported in *Grindlays Bank Ltd v. Central Government Industrial Tribunal and Others*. We do not find that this judgment is relevant for the purpose of the present case.

Section 19 of the Act relates to appeals to the National Commission and mentions that any person aggrieved by an order made by the State Commission, may prefer an appeal to the National Commission. Since an alternative remedy is available to the writ petitioners to approach the National Commission, we do not think that an extraordinary power under Article 226 of the Constitution can be exercised in the matter.

Hence, the writ petition is dismissed. Petitioner is at liberty to file an appeal before the National Commission within four weeks from today. No order as to costs.

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(BILAL NAZKI, ACJ)

16th September 2005.

(G.CHANDRAIAH, J)

ajr